

Update: Crime Victim Rights Manual

CHAPTER 4

Protection From Revictimization

4.6 Limitations on Bond Pending Sentencing or Appeal for “Assaultive Crimes”

Replace the second paragraph on page 61 with the following:

If the defendant has been convicted of an “assaultive crime,” he or she shall not be permitted to post bond pending sentencing or appeal unless the trial court finds by clear and convincing evidence that defendant is not likely to pose a danger to other persons, including the victim, and that defendant was not convicted of sexual assault of a minor. MCL 770.9a(1)–(2).

Effective June 30, 2004,* if a defendant is convicted of sexual assault of a minor and is awaiting sentence or has filed an appeal following sentencing, the court must detain the defendant and deny him or her bail. MCL 770.9b(1)–(2). A minor refers to an individual who is less than 16 years of age. MCL 770.9b(3)(a). “Sexual assault of a minor” means a violation of any of the following involving an individual who is less than 16 years of age:

- ♦ First-degree criminal sexual conduct, MCL 750.520b. MCL 770.9b(3)(b)(i).
- ♦ Second-degree criminal sexual conduct, MCL 750.520c. MCL 770.9b(3)(b)(i).
- ♦ Third-degree criminal sexual conduct involving force or coercion used to accomplish penetration, MCL 750.520d(1)(b). MCL 770.9b(3)(b)(i).
- ♦ Third-degree criminal sexual conduct involving penetration of a victim who is mentally incapable, mentally incapacitated, or physically helpless, MCL 750.520d(1)(c). MCL 770.9b(3)(b)(i).

*2004 PA 32.

- ♦ Third-degree criminal sexual conduct involving penetration of a victim who is related to the defendant by blood or affinity to the third degree, MCL 750.520d(1)(d). MCL 770.9b(3)(b)(i).
- ♦ Third-degree criminal sexual conduct involving a victim who is between the ages of 16 and 18 and a student at a public or nonpublic school and the defendant is a teacher, substitute teacher, or administrator of that public or nonpublic school, MCL 750.520d(1)(e). MCL 770.9b(3)(b)(i).

Note: MCL 770.9b(3)(b)(i) contradicts itself. In order for the defendant to be convicted of MCL 750.520d(1)(e), the victim must be at least 16 years of age but less than 18 years of age. However, pursuant to MCL 770.9b, “sexual assault of a minor” requires that the victim be less than 16 years of age.

- ♦ Third-degree criminal sexual conduct involving penetration of a victim who is at least 13 years old but under the age of 16, MCL 750.520d(1)(a), if the defendant is five or more years older than the victim. MCL 770.9b(3)(b)(ii).
- ♦ Assault with intent to commit criminal sexual conduct, MCL 750.520g. MCL 770.9b(3)(b)(iii).

CHAPTER 7

Victim Notification

7.15 Notification of Communicable Disease Test or Examination Results

Replace the paragraph preceding the bulleted list on page 133 with the following language:

If a criminal defendant is bound over to the Criminal Division of Circuit Court for any of several enumerated offenses, and if the district court determines there is reason to believe that the violation involved sexual penetration or exposure to the body fluid of the defendant, the district court must order the defendant to be examined or tested for venereal disease, hepatitis B infection, hepatitis C infection* and for the presence of HIV or an antibody to HIV. MCL 333.5129(3).

*Effective May 13, 2004, 2004 PA 98 added hepatitis C infection to the list of communicable diseases.

On page 134, replace the paragraph preceding the bulleted list with the following:

MCL 333.5129(4) provides that upon conviction of a defendant or adjudication of a juvenile for a violation of any of the following offenses, the court having jurisdiction of the criminal prosecution or juvenile adjudication must order the defendant or juvenile to be examined or tested for venereal disease, hepatitis B infection, hepatitis C infection* and for the presence of HIV or an antibody to HIV.

*Effective May 13, 2004, 2004 PA 98 added hepatitis C infection to the list of communicable diseases.

CHAPTER 8

The Crime Victim at Trial

8.11 Admissible Hearsay Statements by Crime Victims

C. Statements of Existing Mental, Emotional, or Physical Condition

Insert the following case summary on page 186, immediately before subsection (D):

A declarant's out-of-court statements of memory or belief when the statements are offered to prove the fact remembered or believed are specifically excluded from the hearsay exception described in MRE 803(3). *People v Moorer*, ___ Mich App ___, ___ (2004). In *Moorer*, the defendant argued against the admission of testimony from witnesses who claimed that the victim told them that he "had a confrontation with defendant; that defendant wanted to kill [the victim]; that defendant had threatened to kill [the victim]; that defendant said he had a bullet for [the victim]; and that defendant was looking for [the victim] with a gun." *Moorer, supra* at ___.

The Court of Appeals determined that the trial court had improperly admitted several witnesses' testimony about the victim's out-of-court statements because the statements went beyond MRE 803(3)'s exception for statements concerning a declarant's "then existing mental, emotional, or physical condition." *Moorer, supra* at ___. The Court concluded that the challenged testimony was inadmissible hearsay because it involved the *defendant's* past or presumed future actions rather than describing the *declarant-victim's* intentions or plans. *Moorer, supra* at ___.